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8
9 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

10 In the Matter of

11 **ROBERT WILCOX**

12 Holder of License No. 12472
12 For the Practice of Pharmacy
13 In the State of Arizona

Board Case No. 08-0016-PHR

**CONSENT AGREEMENT
AND ORDER FOR SUSPENSION
AND PROBATION**

14
15 **RECITALS**

16 In the interest of a prompt and judicious settlement of this case, consistent with the
17 public interest, statutory requirements and the responsibilities of the Arizona State Board
18 of Pharmacy ("Board") under A.R.S. §§ 32-1901, *et. seq.*, Robert Wilcox
19 ("Respondent"), holder of Pharmacist License Number 12472 in the State of Arizona, and
20 the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and
21 Order ("Consent Agreement") as a final disposition of this matter.

22 1. Respondent has read and understands this Consent Agreement and has had
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
24 opportunity to discuss this Consent Agreement with an attorney.
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26

1 2. Respondent understands that he has a right to a public administrative
2 hearing concerning the above-captioned matter, at which hearing he could present
3 evidence and cross examine witnesses. By entering into this Consent Agreement,
4 Respondent knowingly and voluntarily relinquishes all right to such an administrative
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or
6 any other administrative and/or judicial action, concerning the matters set forth herein.

7 3. Respondent affirmatively agrees that this Consent Agreement shall be
8 irrevocable.

9 4. Respondent understands that this Consent Agreement or any part of the
10 agreement may be considered in any future disciplinary action by the Board against him.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 3427 involving allegations of unprofessional conduct against Respondent.
13 The investigation into these allegations against Respondent shall be concluded upon the
14 Board's adoption of this Consent Agreement.

15 6. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of any other matters currently pending before the Board, if any,
17 and does not constitute any waiver, express or implied, of the Board's statutory authority
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19 7. Respondent also understands that acceptance of this Consent Agreement
20 does not preclude any other agency, subdivision, or officer of this State from instituting
21 any other civil or criminal proceedings with respect to the conduct that is the subject of
22 this Consent Agreement.

23 8. All admissions made by the Respondent in this Consent Agreement are
24 made solely for the final disposition of this matter, and any related administrative
25 proceedings or civil litigation involving the Board and Respondent. Therefore, any
26

1 admissions made by Respondent in this Consent Agreement are not intended for any
2 other use, such as in the context of another regulatory agency's proceedings, or civil or
3 criminal proceedings, whether in the State of Arizona or in any other state or federal
4 court.

5 9. Respondent acknowledges and agrees that, upon signing this Consent
6 Agreement and returning this document to the Board's Executive Director, he may not
7 revoke his acceptance of the Consent Agreement or make any modifications to the
8 document regardless of whether the Consent Agreement has been signed by the
9 Executive Director. Any modification to this original document is ineffective and void
10 unless mutually agreed by the parties in writing.

11 10. Respondent understands that the Consent Agreement shall not become
12 effective unless and until adopted by the Board and signed by its Executive Director.

13 11. If a court of competent jurisdiction rules that any part of this Consent
14 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
15 shall remain in full force and effect.

16 12. Respondent understands and agrees that if the Board does not adopt this
17 Consent Agreement, he will not assert as a defense that the Board's consideration of this
18 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

19 13. Respondent understands that this Consent Agreement is a public record that
20 may be publicly disseminated as a formal action of the Board and may be reported as
21 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
22 Protection Data Bank.

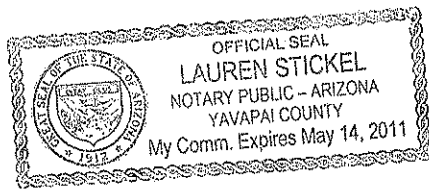
23 14. Respondent understands that any violation of this Consent Agreement
24 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
25 1901.01(B)(20), -1927(A)(1).

1 ACCEPTED AND AGREED BY RESPONDENT

2
3 Robert Wilcox
Robert Wilcox

Dated: 12-21-07

4 Subscribed and sworn to before me in the County of Yavapai, State of Arizona,
5 this 21 day of December, 2007, by Robert Wilcox.



Lauren Stickel
NOTARY PUBLIC

My Commission expires: 5/14/2011

9
10 **FINDINGS OF FACT**

11 1. The Arizona State Board of Pharmacy ("Board") is the duly constituted
12 authority for licensing and regulating the practice of pharmacy in the State of Arizona.

13 2. Robert Wilcox ("Respondent") is the holder of license number 12472 to
14 practice as a pharmacist in the State of Arizona.

15 3. During all times relevant to these Findings, Respondent worked as a
16 pharmacist at Yavapai Regional Medical Center in Prescott, Arizona, and Yavapai
17 Regional Medical Center East in Prescott Valley, Arizona (the "Pharmacies").

18 4. In October 2007, the Board received information from the Pharmacies that
19 Respondent was diverting the controlled substance hydrocodone/guaifen syrup for his
20 own personal use.

21 5. An audit of the Pharmacies was conducted on October 19, 2007, by a Board
22 Compliance Officer. The Compliance Officer determined that Respondent had diverted
23 approximately 45 pints of hydrocodone/guaifen syrup at each pharmacy.

24 6. Hydrocodone/guaifen syrup is a Schedule III controlled substance. A.R.S.
25 § 36-2514(A)(5).
26

1 7. On November 15, 2007, Respondent signed an agreement with Pharmacists
2 Assisting Pharmacists of Arizona ("PAPA"). Respondent had entered into inpatient
3 treatment approximately four weeks before signing the PAPA agreement.

4 **CONCLUSIONS OF LAW**

5 1. The Board possesses jurisdiction over the subject matter and over
6 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

7 2. Pursuant to A.R.S. § 32-1927(A)(1), the Board may discipline a pharmacist
8 who has engaged in unprofessional conduct.

9 3. Respondent's practice and conduct, as described in the Findings of Fact,
10 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(2) ("Violating
11 any federal or state law, rule or regulation relating to the manufacture or distribution of
12 drugs and devices or the practice of pharmacy.").

13 4. Respondent's practice and conduct, as described in the Findings of Fact,
14 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(11) ("Knowingly
15 dispensing a drug without a valid prescription order as required pursuant to section 32-
16 1968, subsection A.").

17 5. Respondent's practice and conduct, as described in the Findings of Fact,
18 constitutes unprofessional conduct, as such conduct constitutes a violation of A.R.S. §
19 32-1968(A) ("A prescription-only drug shall be dispensed only under one of the
20 following conditions: (1) By a medical practitioner in conformance with A.R.S. § 32-
21 1921; (2) On a written prescription order bearing the prescribing medical practitioner's
22 manual signature; (3) On an electronically transmitted prescription order containing the
23 prescribing medical practitioner's electronic or digital signature that is reduced promptly
24 to writing and filed by the pharmacist; (4) On a written prescription order generated from
25 electronic media containing the prescribing medical practitioner's electronic or manual
26

signature. A prescription order that contains only an electronic signature must be applied to paper that uses security features that will ensure the prescription order is not subject to any form of copying or alteration; (5) On an oral prescription order that is reduced promptly to writing and filed by the pharmacist; (6) By refilling any written, electronically transmitted or oral prescription order if a refill is authorized by the prescriber either in the original prescription order, by an electronically transmitted refill order that is documented promptly and filed by the pharmacist or by an oral refill order that is documented promptly and filed by the pharmacist.”)

6. The conduct and circumstances described in the Findings of Fact constitute a violation of A.R.S. § 36-2531(E) (A person may not knowingly or intentionally acquire or obtain possession of a controlled substance by means of forgery, fraud, deception or subterfuge). A person who violates A.R.S. § 36-2531(E) is guilty of a class 4 felony.

7. A person commits theft if, without lawful authority, the person knowingly controls another person’s property with the intent to deprive that other person of such property. A.R.S. § 13-1802(A)(1). Theft is a crime of moral turpitude. *State v. Superior Court of Pima County*, 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978) (shoplifting involves moral turpitude and bears a close relationship to the common law crime of larceny).

8. A person may not knowingly acquire or possess a prescription-only drug unless the person obtains the prescription-only drug pursuant to a valid prescription of a licensed prescriber. A.R.S. § 13-3406(A)(1). Furthermore, a person may not knowingly obtain or procure the administration of a prescription-only drug by fraud, deceit, misrepresentation or subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal acquisition, possession or procurement of a prescription-only drug is a class 1 misdemeanor. A.R.S. § 13-3406(B)(1). “The sale or dispensing or prescribing of

1 narcotic drugs, except for medicinal use and under strict surveillance, [involves] moral
2 turpitude.” *Du Vall v. Board of Medical Examiners of Arizona*, 49 Ariz. 329, 337, 66
3 P.2d 1026, 1030 (1939).

4 9. The conduct and circumstances described above constitutes unprofessional
5 conduct pursuant to A.R.S. § 32-1901.01(B)(8) (“Committing a felony, whether or not
6 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-
7 related offense. In either case, conviction by a court of competent jurisdiction or a plea
8 of no contest is conclusive evidence of the commission.”).

9 10. The conduct and circumstances described above constitute unprofessional
10 conduct pursuant to A.R.S. § 32-1901.01(B)(10) (“Violating a federal or state law or
11 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous
12 drugs, controlled substances or precursor chemicals when determined by the board or by
13 conviction in a federal or state court.”).

14 ORDER

15 Based upon the above Findings of Fact and Conclusions of Law,

16 IT IS HEREBY ORDERED THAT Pharmacist License No. 12472, which was
17 issued to Respondent for the practice of Pharmacy in the State of Arizona, is hereby
18 placed on **SUSPENSION** for a period of not less than four (4) months but not more than
19 ten (10) months. The period of suspension shall be determined by the Board after
20 reviewing (a) information from PAPA regarding Respondent’s compliance with the terms
21 of the PAPA program/contract; (b) a progress report from Respondent’s PAPA counselor,
22 which may be submitted in writing to the Board; and (c) any input from Respondent.
23 Thereafter, Respondent’s license shall be placed on **PROBATION** for a period of at least
24 four (4) years, but not more than four and one-half (4.5) years from the final date of
25 suspension. Respondent’s disciplinary period under the suspension and probation shall
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1 not exceed five (5) years, unless Respondent affirmatively fails to petition the Board to
2 terminate the probation in accordance with paragraph 10 below.

3 The SUSPENSION and PROBATION are subject to the following conditions:

4 1. Respondent shall return his pharmacist license to the Board for the
5 period of suspension. It is noted that Respondent has already delivered his
6 pharmacist license to the Board.

7 2. Respondent signed a PAPA contract on November 15, 2007. Failure
8 to abide by the PAPA contract's terms is a violation of this Order.

9 3. Respondent shall pay all necessary fees and complete all Continuing
10 Education requirements throughout the term of his probation to maintain
11 Pharmacist License No. 12472.

12 4. Respondent shall furnish all pharmacy employers with a copy of this
13 Board Order throughout the term of his probation.

14 5. Respondent shall not serve as a preceptor pharmacist or pharmacist
15 in charge throughout the term of his probation.

16 6. Respondent shall advise the Board immediately of any change in
17 pharmacy employment status throughout the term of his probation.

18 7. Respondent shall furnish the Board with a list of all jurisdictions in
19 which he maintains or has maintained licensure in the profession of pharmacy
20 along with the registration numbers of said licenses.

21 8. Respondent shall obey all federal and state laws and rules governing
22 the practice of pharmacy.

23 9. If Respondent violates this order in any way or fails to fulfill the
24 requirements of this order, the Board, after giving the respondent notice and the
25 opportunity to be heard, may revoke, suspend or take other disciplinary actions
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1 against the Respondent's license. The issue at such a hearing will be limited
2 solely to whether this order has been violated.

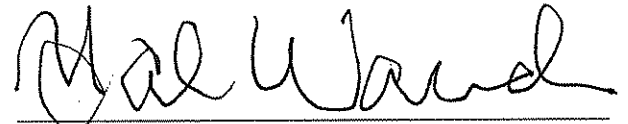
3 10. Respondent shall appear before the Board at a regularly scheduled
4 Board meeting five years after the effective date of this Order to request that the
5 probation imposed by this order be terminated. Respondent's failure to petition
6 the Board to terminate the probation shall extend the probation period.

7 DATED this 28 day of Jan., 2008.

8 ARIZONA STATE BOARD OF PHARMACY

9 (Seal)

10 By:


11 HAL WAND, R.Ph.
12 Executive Director

13 ORIGINAL OF THE FOREGOING FILED
14 this 28 day of Jan., 2008, with:

15 Arizona State Board of Pharmacy
16 1700 West Washington, Suite 250
17 Phoenix, Arizona 85007

18 EXECUTED COPY OF THE FOREGOING MAILED
19 BY FIRST-CLASS and CERTIFIED MAIL
20 this 28 day of Jan., 2007, to:

21 Robert Wilcox
22 2262 Sequoia Drive
23 Prescott, Arizona 86301

24 EXECUTED COPY OF THE FOREGOING MAILED
25 this 28 day of Jan., 2007, to:

26 Elizabeth A. Campbell
Assistant Attorney General
1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007


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